

**Letter of Findings Number: 01-20140094
Indiana Adjusted Gross Income Tax
For Tax Year 2012**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.

ISSUES

I. Adjusted Gross Income Tax—Proposed Notice of Tax Due.

Authority: IC § 6-3-2-2; IC § 6-8.1-5-1.

Taxpayers protest the assessment of additional individual income tax.

II. Tax Administration—Penalties and Interest.

Authority: IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayers protest the imposition of penalties and interest.

STATEMENT OF FACTS

Taxpayers are husband and wife who are out-of-state residents with Indiana source income. Taxpayers filed a 2012 Indiana Individual Income Tax Return on which they reported figures based on self-made estimates. The Indiana Department of Revenue ("Department") disagreed with certain figures as reported on the returns and corrected them. The Department also assessed penalties and interest. Taxpayers disagreed with the additional income tax assessments, penalties, and interest. Taxpayers submitted a protest to that effect. An administrative hearing was conducted and this Letter of Findings results. Further facts will be supplied as required.

I. Adjusted Gross Income Tax—Proposed Notice of Tax Due.

DISCUSSION

Taxpayers received a notification from the Department in which the Department informed Taxpayers of inconsistencies in Taxpayers' 2012 return. The Department made adjustments to Taxpayers' 2012 Indiana return and issued a proposed assessment which resulted from those adjustments. Taxpayers protested indicating that the reason for the discrepancies in the figures was because they had not received their 2012 federal or state Schedule K-1s from three related companies in which they had investments. Taxpayers however did receive information from the three related companies with estimated amounts of the figures to be listed on the Schedule K-1s. Taxpayers used this information to file their Indiana return using self-made estimates in order to avoid late filing penalties. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

Adjusted gross income for Indiana nonresidents is defined by IC § 6-3-2-2, which states in relevant part:

(a) With regard to corporations and nonresident persons, "adjusted gross income derived from sources within Indiana", for the purposes of this article, shall mean and include:

- (1) income from real or tangible personal property located in this state;
- (2) income from doing business in this state;
- (3) income from a trade or profession conducted in this state;
- (4) compensation for labor or services rendered within this state

....

Therefore, when gross income is derived in Indiana it is subject to Indiana income tax. The Department is allowed the authority to make a proposed assessment using the best information possible as stated by IC § 6-8.1-5-1(b):

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to [IC 6-8.1-10](#) concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail.

Taxpayers protest the imposition of adjusted gross income tax. Taxpayers claim that they would have missed the extended deadline for filing had they not used estimated figures. Taxpayers filed using the estimated Indiana sourced income and tax withholding that had been provided to them. As part of the protest process, Taxpayers have obtained and provided the Schedule K-1s that were not available at the time of initial filing.

Taxpayers have provided the missing Schedule K-1s to support their protest. Taxpayers are sustained subject to audit verification. The Department will conduct a supplemental audit to verify the newly supplied K-1s and to determine the amount of Indiana income tax for 2012.

FINDING

Taxpayers' protest is sustained subject to audit verification.

II. Tax Administration—Penalties and Interest.

DISCUSSION

Taxpayers protest the imposition of penalties pursuant to IC § 6-8.1-10-2.1 and the imposition of interest pursuant to IC § 6-8.1-10-1. The Department notes that waiver of interest is not permitted under IC § 6-8.1-10-1(e). Penalty waiver is permitted if the taxpayers show that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. [45 IAC 15-11-2\(b\)](#) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The standard for waiving the negligence penalty is given at [45 IAC 15-11-2\(c\)](#) as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayers' protest is in regards to the Department's assessment of penalties and interest. After review of the documentation and analysis provided in the protest process, the Department may not waive interest, as provided by IC §6-8.1-10-1(e). However, after the Department conducts the supplemental audit regarding the calculation of base tax as described in Issue I above, the Department will also recalculate interest on any remaining amount of

base tax. Taxpayers have affirmatively established that they exercised ordinary business care in this case. Therefore, waiver of penalties is warranted under [45 IAC 15-11-2\(c\)](#).

FINDING

Taxpayers' protest to the imposition of penalties is sustained subject to audit verification.

SUMMARY

Taxpayers' Issue I protest regarding the imposition of adjusted gross income tax is sustained subject to audit verification. Taxpayers' Issue II protest regarding the imposition of penalties is also sustained subject to audit verification.

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An [html](#) version of this document.